UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION	No. 11-md-02293 (DLC) ECF Case
This Document Relates to: ALL ACTIONS	CLASS ACTION

JOINT STIPULATION AND ~~[PROPOSED]~~ ORDER REGARDING FILING OF CONSOLIDATED FIRST AMENDED CLASS ACTION COMPLAINT

Defendant Apple Inc. ("Apple") and Plaintiffs in the above-captioned action ("Plaintiffs"), by and through their respective counsel of record (collectively, the "Parties"), hereby agree and stipulate as set forth herein based on the following recitals:

WHEREAS, Plaintiffs filed the Consolidated Amended Class Action Complaint ("Amended Complaint") in the above-captioned action on January 20, 2012 and Apple filed its Answer to the Amended Complaint on May 29, 2012;

WHEREAS, Plaintiffs now wish to file a Consolidated First Amended Class Action Complaint ("First Amended Complaint"), attached hereto as Exhibit A to this Stipulation, in order to dismiss certain named plaintiffs and state law claims, modify the class definition, and add new allegations in light of developments subsequent to the filing of the Amended Complaint;

WHEREAS, Federal Rule of Civil Procedure 15(a)(2) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave" after the period to amend a pleading as of right has passed;

WHEREAS, the Parties have conferred regarding Plaintiffs' filing of the First Amended Complaint and Apple has agreed, subject to the terms and conditions in this Stipulation, to consent to Plaintiffs' filing of the First Amended Complaint;

WHEREAS, Apple observes that Plaintiffs have alleged continuing injury through the date of the filing of the First Amended Complaint and Apple asserts that for reasons of fairness, efficiency, judicial economy and to avoid the possibility of inconsistent rulings, it is incumbent on Plaintiffs to seek in this action any and all claims for damages on behalf of the Plaintiffs and any member of a certified class to which they believe they are entitled arising from the alleged ongoing conduct up to the date of the filing of the First Amended Complaint;

WHEREAS, Plaintiffs do not assent to the merits of any arguments Apple asserts or refers to in this stipulation;

WHEREAS, Plaintiffs and Plaintiff States[1] have represented to the Court that they are only making a claim for alleged damages arising from conduct alleged in the First Amended Complaint for the time period up to May 21, 2012;[2]

WHEREAS, Apple does not acquiesce in any limitation of Plaintiffs' and Plaintiff States' claim for alleged damages to May 21, 2012, nor in any limitation of discovery based thereon;

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[1] "Plaintiff States" refers to plaintiffs in *The State of Texas v. Penguin Group (USA), Inc.* Case, No. 12-cv-3394 (DLC), also pending before this Court.

[2] *See* Aug. 9, 2013 Hearing Tr. 34:1-6 (stating that Plaintiffs and Plaintiff States seek damages "[t]hrough May 2012"); Sept. 9, 2013 Hearing Tr. 26:1-27:4 (clarifying that Plaintiffs' and Plaintiff States' damages cutoff is based on May 21, 2012 being the cutoff date provided for in the consumer notice in Plaintiffs' and Plaintiff States' settlements with Publisher Defendants).

WHEREAS, Apple is preserving any defense that, pursuant to the doctrines of *res judicata* and claim preclusion, a judgment will bar any future claims for damages on behalf of the plaintiffs and any member of a certified class that were or could have been brought in the action up through the deemed date of filing of the First Amended Complaint;

WHEREAS, Apple does not waive and preserves all other objections, defenses and rights to challenge the allegations in Plaintiffs' First Amended Complaint as permitted by law, including but not limited to Apple's objections to any new allegations as to which factual discovery is not allowed;

WHEREAS, Apple wishes to amend its Answer to reflect new allegations in the First Amended Complaint and developments since Apple filed its Answer on May 29, 2012, including but not limited to the settlements that Plaintiffs and Plaintiff States have entered into with Publisher Defendants;[3] and

WHEREAS, Plaintiffs do not object to Apple seeking to amend its Answer but reserve all rights regarding the substance of those amendments;

NOW, THEREFORE, the Parties, by and through their undersigned counsel, hereby stipulate and agree as follows:

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[3] On August 29, 2012, Plaintiff States moved for preliminary approval of settlement agreements with Defendants HarperCollins, Hachette and Simon & Schuster covering the claims of consumers residing in fifty-five States, Commonwealths, Territories and Possessions who purchased e-books from Defendant Publishers from April 1, 2010 to May 21, 2012, with the exception of those consumers who exercise the right to exclude themselves from the settlements, and the Court granted final approval of those settlements on February 8, 2013. On June 21, 2013, Plaintiffs moved for preliminary approval of settlement agreements with Defendants HarperCollins, Hachette and Simon & Schuster covering the claims of consumers residing in Minnesota who purchased e-books from Defendant Publishers from April 1, 2010 to May 21, 2012, with the exception of those consumers who exercise the right to exclude themselves from the settlements, and the Court granted preliminary approval of those settlements on August 5, 2013. On June 21, 2013, Plaintiffs and Plaintiff States moved for preliminary approval of settlement agreements with Defendants Macmillan and Penguin covering the claims of consumers residing in Plaintiff States and Settlement Class members (as defined therein) who purchased e-books from Defendant Publishers from April 1, 2010 to May 21, 2012, with the exception of those consumers who exercise the right to exclude themselves from the settlements, and the Court granted preliminary approval of those settlements on August 6, 2013.

1. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs' First Amended Complaint, attached hereto as Exhibit A, shall be deemed filed as of the date the Court signs the below order and provides notice to the Parties.

2. Apple's consent to the filing of the First Amended Complaint does not in any way limit, impair, or waive any of Apple's defenses or objections, including but not limited to Apple's defense that, pursuant to the doctrines of *res judicata* and claim preclusion, a judgment will bar any future claims for damages on behalf of the Plaintiffs and any member of a certified that class that were or could have been brought in the action up through the date of filing of the First Amended Complaint, and Apple's objections to any new allegations as to which factual discovery is not allowed.

3. Apple's Answer to Plaintiffs' Amended Complaint, filed on May 29, 2012, shall be deemed as responsive to Plaintiffs' First Amended Complaint, except that Apple will, within 10 days after the entry of this Order, file an Amended Answer to Plaintiffs' First Amended Complaint that need only address the new or amended allegations contained in Paragraphs 21, 183, 184, 187, 188, 189, 214, and 219 of the First Amended Complaint, and may amend or supplement Apple's affirmative defenses.

Respectfully submitted,

DATED: October 10, 2013

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So ordered.
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Co-Lead Counsel for Plaintiffs

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

_____
The Honorable Denise Cote
United States District Judge